

**REMARKS/ARGUMENTS**

This application has been carefully considered in light of the non-final office action mailed March 29, 2007. Responsively, claims 1-5 have been amended, claim 6 canceled without prejudice and new claims 7-14 added. No new matter has been added. In the action the Examiner stated that the Applicants' Information Disclosure Statement did not include legible copies of the foreign references. If the references were not legible or are missing, it is respectfully submitted that the error occurred within the Patent Office. Submitted herewith is a copy of Form PCT/DO/EO/905 which specifically lists that the references cited in the Information Disclosure Statement had been received. Submitted herewith is a replacement set of the foreign references, the relevance of which are indicated on the copy of the submitted international search report, a further copy of which is submitted herewith. No fees are believed due as the Information Disclosure Statement did included the foreign references when filed.

In the office action the Examiner has objected to the drawings for not showing the features set forth in original claim 6. Responsively, claim 6 has been canceled.

Claims 1-6 have been rejected under 35 U. S. C. 112, second paragraph, as being indefinite. In view of the amendment to the claims submitted herewith, reconsideration and withdrawal of this grounds for rejection is respectfully solicited.

Claims 1, 3, 4 and 6 have been rejected under 35 U.S.C. 102(b) as being directly anticipated by the teachings of the reference to US Patent 5,845,420 to Buccianti et al. Claims 1, 3 and 5 have been rejected under 35 U.S.C. 102(b) as being directly anticipated by the teachings of the reference to US Patent 4,858,338 to Schmid. Claim 5 has been rejected under 35 U.S.C. 103(a) as being obvious and therefore unpatentable over the teachings of Buccianti et al and claim 2 has been rejected under 35 U.S.C. 103(a) as being obvious and therefore unpatentable over the teachings of Buccianti et al when further considered in view of official notice.

Claim 1 has also been rejected under 35 U.S.C. 102(b) as being directly anticipated by the teachings of the reference to US Patent 5,572,805 to Giese et al.

The present invention is directed to a sports shoe that includes a dynamic insert within the sole that provides for resilient lateral support of a user's foot when they are moving

laterally or shifting their body weight from side to side. As explained beginning at line 14 of page 7 and with reference to Fig. 7 of the present application, when there is no lateral stress on the sole, the support plate 3 is generally planar as is shown in Fig. 6. However, as a user moves forward and laterally, the branch element 7 is elastically deformed by the force being applied, however, this elastic deformation of the branch element and the underlaying support element acts or functions to load both elements, or store energy, such that they will not only aid in absorbing impact forces, they will also provide return force to assist and returning the users foot to a more neutral position. Thus the support plate 3 is provided to absorb energy and subsequently use the stored energy to return the shoe sole to the balanced or neutral position thereof that is shown in Fig. 6. The support elements that are engaged by the branch elements of the support plate provide additional resiliency to the sole of the shoe.

In addition to a foregoing, the support plate in the present invention is positioned such that the central part thereof is in the zone of the metatarsus, see page 6, lines 1-7, which is an area between the arch and front or toe portion of the sole of the shoe where the ball portion of the foot is supported. This positioning relative to the sole is important to provide the

resilient support, taught in the application, to a user when moving laterally such that most force is being exerted against the front portions of the feet. Further, the branches extend in at least a first pair toward the arch portion of the sole and at least a second pair toward the forward portion of the sole such that resilient support is provided in the area surrounding the metatarsus of the foot.

The present invention also provides a transverse groove 9 that permits elastic deformation of the support plate 3 along an axis that transverse to the elongated axis of the sole, see page 6, lines 3-7 of the application. No similar structure or functionality is taught in the reference to Buccianti et al.

The primary reference to Buccianti et al does not teach or suggest the functionality nor the structure of the present invention. The Examiner has referred to the four branches of the plate of Buccianti et al as a lateral return plate, however, there is no suggestion in the reference that the plate or the branches thereof provide any resiliency to the sole. Rather, the patent teaches away from the X-shaped plate being resilient as the purpose of the plate is to reinforce and rigidify the sole. As discussed at column 1 beginning at line 12 of the reference, the prior art sole inserts do not provide resistance to torsional

stress. However, the sole of the reference is more torsion-resistant. Also, the X-frame of the reference is specifically designed and positioned in the arch portion of the sole and such that the branched portions extend across a width of the arch portion of the sole so that reinforcing u-shaped portions at the ends thereof function to reinforce the sides of the sole in the area of the arch.

In view of the foregoing, the X-frame of Buccianti et al does not include resilient branches as is taught by the present invention, provides no resilient support in the metatarsal area of the sole as taught by the present invention, and does not incorporate resilient support elements for the branches nor a transverse groove for permitting elastic deformation of a plate or frame about an axis transverse to the elongated axis of the sole of a shoe, as is the case with the present invention.

The reference to Schmid has also been considered but is not believed to teach the inventive features of applicants invention for many of the same reasons as set forth above. With the present invention, the support plate includes at least a first pair of branches that extend from the metatarsal area of the sole toward but spaced from the area of the arch and at least one second pair of branches that extend from the metatarsal area

toward the front of the sole. In the cited reference, the insert 20 is to the entire sole from front to rear and from side to side. The insert is constructed of three different layers with layers 22 and 34 made of strips of graphite fibers oriented at different angles and a layer 35 made of vibration dampening material.

One of the specific differences in the operating characteristics of the insert of the Schmid reference and the present invention is that the Schmid insert is designed to provide resilient support in such a manner as to assist a person when moving forward. As discussed beginning at line 60 of column 5 of the patent to Schmid, the graphite layers actively store energy to assist in the forward motion of a user whereas, with the present invention, the branches of the support plate are oriented to provide lateral assist to the user and the user moves from side to side. In addition, there is no provision of a transverse groove in Schmid to facilitate resilient motion in the support plate transverse to the elongated axis of the sole.

In view of the foregoing, the insert of Schmid extends along the entire sole and does not include resilient branches, as taught by the present invention, which provide lateral assist in the metatarsal area of the sole, does not incorporate spaced

resilient support elements for the branches, nor does the reference include any transverse groove for permitting elastic deformation of a plate or frame about an axis transverse to the elongated axis of the sole of a shoe, as is the case with the present invention.

The Examiner has also rejected claim 1 over the reference to Giese et al, citing the structure at figures 111 and 116. The insert 19, however, is not a return plate in keeping with the teachings of the present invention. As shown, and as discussed at column 12 beginning at line 7 of Giese et al, the member 19 is a stabilizer that has two forward projecting arms 29 that extend to the ball of the foot with the primary portion of the insert serving as a support stabilizer for the arch and heel. Thus, this reference does not teach the structural elements of the present invention that provide lateral resilient support in the metatarsal area of the foot. The reference only teaches a cushioned reinforcement extending from a heel toward the ball of the sole of the shoe. There are no first and second pairs of oppositely oriented resilient branches for facilitating lateral support and movement, as is provided by the shoes of the present invention. There is also no resilient supports for the branches nor structure to permit resiliency of a support plate in a direction transverse to the longitudinal axis of the sole, as is

the case with the structure of the present invention.

In view of the foregoing, reconsideration of the rejections under 35 U.S.C. 102(b) are respectfully solicited and favorable consideration and allowance of claims 1-5 and 7-14 requested.

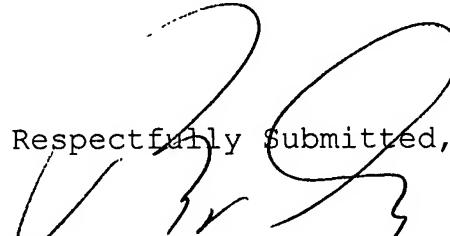
In order to anticipate a claimed invention for obviousness over a combination of references, the references or, in this instance, the "official notice" relied upon, must teach the elements of the claimed invention or equivalent structures with respect thereto and must also suggest the combination or suggest that it would be obvious to try a modification of the references to anticipate the particulars of the present invention as claimed. As it is believed claim 1 is not anticipated by the reference to Bucciani et al, it is respectfully submitted that the combination suggested by the Examiner with respect to official notice would not make obvious claim 2 as even if one of ordinary skill in the art used the official notice to modify the structure of Bucciani et al, the resultant structure could not and would not suggest applicants' invention as described and claimed in the present application for the reasons set forth above.

In view of the foregoing, reconsideration of the rejection

under 35 U.S.C. 103(a) is respectfully requested and favorable consideration and allowance of claim 5 is solicited.

Should the Examiner have any questions regarding this response or the allowability of the claims, it would be appreciated if the Examiner would contact the undersigned attorney to further expedite the further prosecution of this application and to schedule a personal interview before taking any action that may be considered as final.

Respectfully Submitted,

  
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